

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 32155.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Grace P. Crocker, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Grace P. Crocker appeals the decision of the California State Office, Bureau of Land Management (BLM), dated June 28, 1983, which declared the unpatented Big Meadows placer mining claim, CA MC 32155, abandoned and void

for failure to file on or before December 30, 1981, evidence of annual assessment work or a notice of intention to hold the claim, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Appellant included a copy of the proof of labor for the subject claim as recorded August 6, 1981, in Mono County, California, for the assessment year 1981. She stated that a copy of the recorded proof of labor, showing serial identification CA MC 32155, for 1981 was sent to BLM. The 1982 proof of labor was filed with BLM September 7, 1982.

[1] Under section 314 of FLPMA, the owner of a mining claim located on Federal lands must file a notice of intention to hold the mining claim or evidence of the performance of annual assessment work on the claim, both in the county where the location notice is recorded and in the proper office of BLM on or before December 30 of each year. When it enacted FLPMA, Congress made this requirement mandatory, not discretionary, and failure to comply timely with this requirement is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980).

Filing is accomplished only when a document is delivered to and received by the proper BLM office. Hughes Minerals, Inc., 74 IBLA 217 (1983); Regina McMahon, 56 IBLA 372 (1981); Everett Yount, 46 IBLA 74 (1980). The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, *supra*.

[2] In Lynn Keith, *supra*, this Board discussed the conclusive presumption of abandonment as follows:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

* * * Appellant also argues that the intention not to abandon these claims was apparent * * *. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by

complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered.
[Emphasis in original.]

53 IBLA at 196-97, 88 I.D. 371-72.

BLM has stated that it has carefully examined all other files in which appellant may have an interest, and has not found any 1981 proof of labor for the Big Meadows placer mining claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Will A. Irwin
Administrative Judge

